

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01362

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01665

DEFENDANTS' ELEVENTH DISCOVERY STATUS REPORT

For the benefit of the Special Master and the information of the Court, Defendants submit their eleventh biweekly discovery status report pursuant to the Court's request during the March 5, 2020 status conference. *See* Status Conf. Tr. 41:15-23 (Mar. 5, 2020).¹

Discovery is now focused on experts and the completion of third-party fact discovery. The Court has extended the deadline for Defendants' expert reports to August 27, and the parties are in the process of scheduling deposition dates for Plaintiffs' disclosed experts. Defendants also

¹ Consistent with discussion at the status conference, this filing is not a vehicle to seek any relief from the Court and any necessary motions will be filed separately. Rather, this report is simply to update the Special Master on the progress of the case as the Court monitors the overall schedule and plans for the litigation.

continue to schedule and conduct remaining third-party depositions. Nine third-party witnesses have been deposed since July 28, and several more are scheduled for this week. As described in Defendants' previous status reports, the delay in deposing these organizations and individuals was caused almost entirely by delays in document productions due to the COVID-19 pandemic. Although Defendants and third parties have worked diligently to complete these document productions, the volume of third-party document discovery has continued to delay the completion of third-party depositions. Defendants nevertheless expect to complete these remaining depositions in advance of trial. Given these delays in third-party discovery, it will likely be necessary for Defendants to submit supplemental expert reports following the August 27 deadline, although that issue is not yet ripe.

I. Fact Discovery

Depositions of Plaintiffs' witnesses are nearly complete, with only two necessary depositions yet to be scheduled due to personal and family health issues. The parties have agreed to future depositions for trial witnesses who have not been deposed previously in any opioid litigation.

A more substantial number of third-party depositions remain outstanding, due to the delayed production of documents from third parties. In particular, the parties received voluminous productions from Marshall University and Marshall Health (approximately 500,000 pages) on July 27, and from the State of West Virginia (Department of Health and Human Resources (DHHR) (over 1.6 million pages) on July 30. By agreement of the parties, the remaining third-party depositions are proceeding past the formal deadline for fact discovery. These depositions include key witnesses from the West Virginia Board of Pharmacy, Board of Medicine, and other West Virginia state agencies. These groups hold unique knowledge regarding appropriate and inappropriate use of prescription opioids in Huntington and Cabell County, and their testimony is

important to the issues in this case. The majority of these third-party depositions have been scheduled to occur later this month, and the parties are working to schedule the remaining few depositions.

Defendants' May 15 motion for discovery responses from the West Virginia Bureau for Children and Families (BCF) remains fully briefed. ECF Nos. 430, 431. The documents in question were among those produced from DHHR. Defendants offered to have their vendor process the documents, to which Plaintiffs agreed, and progress is being made. No action from the Court is currently required.

II. Expert Discovery

Pursuant to the Court's recent scheduling order, Defendants will submit expert reports by August 27. Defendants are reviewing Plaintiffs' August 3 expert disclosures, which included 20 expert reports totaling over 2,000 pages. On August 7, Plaintiffs offered one deposition date each for 18 of their 20 witnesses, to take place in between September 1 and September 22. Plaintiffs have not yet offered dates for Drs. Gordon Smith and Ellen Thompson, neither of whom have been previously disclosed as experts in other recent opioid litigation against Defendants. Defendants will confer with Plaintiffs regarding these dates, and once Defendant expert reports are disclosed, deposition dates for Defendant experts.

III. Pending Objections to Discovery Rulings

During the course of discovery, some of Special Master Wilkes's rulings have been appealed to Judge Faber. The following is currently before the Court:

- On August 1, Plaintiffs objected to the Special Master's Order Granting Defendants' Motion to Compel Production of Certain City of Huntington Documents. ECF No. 820. The Special Master previously ordered Plaintiffs to produce 3,464 documents withheld due to "Third Party Confidentiality

Restrictions” and another 3,416 documents withheld due to law enforcement privilege. ECF No. 801. Plaintiffs object to the production of a subset of those records. ECF No. 820. Defendants filed their response on August 6. ECF No. 837. Plaintiffs’ reply is due today, August 11. Separately on August 7, the Federal Bureau of Investigation moved for a protective order regarding these documents. ECF No. 847. The motion was referred to the Special Master, who has scheduled a hearing for Friday, August 14.

ABDC withdrew its objection to Discovery Ruling 11 following agreement of parties. ECF No. 836.

Dated: August 11, 2020

Respectfully Submitted,

McKesson Corporation

By Counsel:

/s/ Jeffrey M. Wakefield

Jeffrey M. Wakefield (WVSB #3894)

jwakefield@flahertylegal.com

Jason L. Holliday (WVSB #12749)

jholliday@flahertylegal.com

FLAHERTY SENSABAUGH BONASSO PLLC

P.O. Box. 3843

Charleston, WV 25338-3843

Telephone: (304) 345-0200

/s/ Timothy C. Hester

Timothy C. Hester

Mark H. Lynch

Christian J. Pistilli

Laura Flahive Wu

COVINGTON & BURLING LLP

One CityCenter

850 Tenth Street NW

Washington, DC 20001

Tel: (202) 662-5281
thester@cov.com
mlynch@cov.com
cpistilli@cov.com
lflahivewu@cov.com

AmerisourceBergen Drug Corporation

By Counsel:

/s/ Gretchen M. Callas
Gretchen M. Callas (WVSB #7136)
JACKSON KELLY PLLC
Post Office Box 553
Charleston, West Virginia 25322
Tel: (304) 340-1000
Fax: (304) 340-1050
gcallas@jacksonkelly.com

/s/ Robert A. Nicholas
Robert A. Nicholas
Shannon E. McClure
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Tel: (215) 851-8100
Fax: (215) 851-1420
rnicholas@reedsmith.com
smcclure@reedsmith.com

Cardinal Health, Inc.

By Counsel:

/s/ Brian A. Glasser
Brian A. Glasser (WVSB #6597)
Steven R. Ruby (WVSB #10752)
Raymond S. Franks II (WVSB #6523)
BAILEY GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555
Facsimile: (304) 342-1110
Counsel in Cabell County action

/s/ Enu Mainigi
Enu Mainigi

F. Lane Heard III
Ashley W. Hardin
WILLIAMS & CONNOLLY LLP
725 Twelfth Street NW
Washington, DC 20005
Tel: (202) 434-5000
Fax: (202) 434-5029
emainigi@wc.com
lheard @wc.com
ahardin@wc.com

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 11th day of August, the foregoing **“Defendants’ Eleventh Discovery Status Report”** was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Jeffrey M. Wakefield
Jeffrey M. Wakefield (WVSB #3894)